

**GUIDELINES  
FOR THE OFFERING,  
MARKETING AND  
DISTRIBUTION  
OF FOREIGN FUNDS  
SC-GL/OMD-2008 (R2-2017)**

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**Suruhanjaya Sekuriti**  
Securities Commission  
Malaysia

**GUIDELINES FOR THE OFFERING, MARKETING AND DISTRIBUTION  
OF FOREIGN FUNDS**

Effective Date upon Issuance:	3 March 2008
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## **1.0 APPLICATION OF GUIDELINES**

- 1.01 The *Guidelines for the Offering, Marketing and Distribution of Foreign Funds* (Guidelines) is issued by the Securities Commission Malaysia (SC) under section 377 of the *Capital Markets and Services Act 2007*.
- 1.02 These Guidelines set out the–
- (a) types of foreign funds that may be offered, marketed or distributed; and
  - (b) requirements for the offering, marketing or distribution of a foreign fund.
- pursuant to any agreement or arrangement between securities regulators including any circular, announcement, notice or guidance issued pursuant thereto, or as otherwise specified by the SC, in relation to the offering, marketing and distribution of foreign funds in Malaysia.
- 1.03 [Deleted]
- 1.04 [Deleted]
- 1.05 These Guidelines do not apply to the offering, marketing and distribution of a foreign business trust.
- 1.06 The SC may, upon application, grant an exemption from or a variation to the requirements of these Guidelines if the SC is satisfied that–
- (a) such exemption or variation, if granted, is not contrary to the intended purpose of the relevant provision in these Guidelines; or
  - (b) there are mitigating factors which justify the said exemption or variation.
- 1.07 The adviser, operator and representative of a foreign fund must provide the SC with information and documents as specified in these Guidelines. Such information and documents must be true, complete and accurate.

## 2.0 DEFINITIONS

2.01 Unless otherwise defined, all words used in the Guidelines shall have the same meaning as defined in the CMSA. In these Guidelines, the following words have the following meanings, unless the context otherwise requires:

ACMF	means the ASEAN Capital Markets Forum;
ACMF NRI MoU	means the memorandum of understanding concerning co-operation and exchange of information on cross-border offers of ASEAN collective investment schemes to non-retail investors;
ACMF Retail MoU	means the memorandum of understanding on streamlined authorisation framework for cross-border public offers of ASEAN collective investment schemes;
ACMF Signatory	means the securities regulator of the ASEAN jurisdiction which has signed the ACMF NRI MoU and/or ACMF Retail MoU;
adviser	means a holder of a CMSL for advising on corporate finance or such other person as may be approved by the SC based on the person's qualification, expertise and experience;
ASEAN CIS	means Qualifying CIS;
authorised	means an authorisation, approval, registration or recognition (as the case may be) granted by a securities regulator in a foreign jurisdiction;
Bursa Securities	means Bursa Malaysia Securities Bhd;
closed-end fund	has the same meaning assigned to it in the <i>Guidelines for Public Offerings of Securities of Closed-end Funds</i> ;
CMSA	means the <i>Capital Markets and Services Act 2007 [Act 671]</i> ;
CMSL	means a Capital Markets Services Licence granted to a person pursuant to section 61 of the CMSA;

collective investment scheme (CIS)	<p>means, any arrangement where–</p> <ul style="list-style-type: none"> <li>(a) it is made for the purpose, or having the effect, of providing facilities for persons to participate in or receive profits or income arising from the acquisition, holding, management or disposal of securities, derivatives or any other property (hereinafter referred to as “scheme’s assets”) or sums paid out of such profits or income;</li> <li>(b) the persons who participate in the arrangements do not have day-to-day control over the management of the scheme’s assets; and</li> <li>(c) the scheme’s assets are managed by an entity who is responsible for the management of the scheme’s assets and is approved/authorised/licensed by a securities regulator to conduct fund management activities;</li> </ul>
CUTA	<p>means an institution, a corporation or an organisation of financial planners that is registered as a corporate unit trust adviser with FIMM;</p>
FIMM	<p>means Federation of Investment Managers Malaysia, a self-regulatory organisation recognised by the SC under the CMSA;</p>
foreign fund or fund	<p>means a CIS that is primarily regulated in a jurisdiction other than Malaysia, whether unlisted or listed on an exchange in that jurisdiction;</p>
home jurisdiction	<p>means the jurisdiction in which–</p> <ul style="list-style-type: none"> <li>(a) a Qualifying CIS is constituted or established, and authorised by the securities regulator of that jurisdiction for offer to the public in that jurisdiction; or</li> <li>(b) a NRI CIS is constituted or established, and managed by an operator licensed by or registered with the securities regulator of that jurisdiction in accordance with the ACMF NRI MoU,</li> </ul> <p>as the case may be;</p>
home regulator	<p>means the securities regulator of the home jurisdiction;</p>

host jurisdiction	means a jurisdiction (other than the home jurisdiction) in which– (a) a Qualifying CIS is offered or to be offered to the public in that jurisdiction; or (b) a CIS is offered or to be offered to the non-retail investors in that jurisdiction, as the case may be;
host regulator	means the securities regulator of the host jurisdiction;
IOSCO	means the International Organization of Securities Commissions;
IOSCO MMoU	means the IOSCO multilateral memorandum of understanding concerning consultation and co-operation, and the exchange of information among securities regulators;
IUTA	means an institution, a corporation or an organisation that is registered as an institutional unit trust adviser with FIMM;
NAV per unit	means the NAV of the fund divided by the number of units in circulation, at the valuation point;
net asset value (NAV)	means the value of all the fund's assets less the value of all the fund's liabilities at the valuation point;
NRI CIS	means a CIS that is recognised by the SC to be offered, marketed or distributed to sophisticated investors;
offering document	means a prospectus, disclosure document, information memorandum, or any other document, as the case may be, inviting subscriptions or offering to subscribe for or purchase units of the foreign fund;
Operator	means a person that operates or manages, and is responsible for, the foreign fund;
permitted entity	means the entity as specified in Appendix 3
principal adviser	has the meaning given in the <i>Principal Adviser Guidelines</i> ;

Qualifying CIS	means a CIS–
	(a) constituted or established in its home jurisdiction which has been authorised by the home regulator for offer to the public in the home jurisdiction; and
	(b) has been assessed by the home regulator as suitable pursuant to the Standards of Qualifying CIS to apply to a host regulator for cross-border offering to the public in a host jurisdiction pursuant to the ACMF Retail MoU;
Qualifying CIS Operator	means an operator that complies with the requirements of the Standards of Qualifying CIS;
registered distributor	means–
	(a) IUTA or CUTA, where the foreign fund is a fund as specified in sub-paragraphs 3.01(a) and (b) of these Guidelines; or
	(b) a person registered pursuant to Section 76(2) of the CMSA, where the foreign fund is a fund as specified in sub-paragraph 3.01(c) of these Guidelines;
securities regulator	means a foreign authority which carries out similar functions to that of the SC as provided for under section 15 of the <i>Securities Commission Act 1993 [Act 498]</i> ;
sophisticated investor	means any person who comes within any of the categories of investors set out in Part 1, Schedule 6 and 7 of the CMSA and such person shall be referred to as non-retail investors (NRI) in the context of ACMF NRI MOU;
Standards of Qualifying CIS	means a set of rules and regulations as agreed and may be amended from time to time among the ACMF Signatories, which applies only to the Qualifying CIS under the ACMF Retail MoU.

2.02 Where relevant, references to “unit(s)” in these Guidelines should be read to include shares or any other instrument representing a right or interest in a foreign fund and “unit holder(s)” should be read to refer to shareholders or any person entitled to be recognised as owner of such right or interest in that foreign fund.



### 3.0 PERMITTED FOREIGN FUNDS

3.01 Subject to the requirements under these Guidelines, a foreign fund may be offered, marketed or distributed in Malaysia provided the foreign fund is–

- (a) a fund from a jurisdiction as specified under Appendix 1 of these Guidelines;
- (b) a fund as specified under Appendix 2 of these Guidelines;
- (c) a fund offered by a permitted entity as specified under Appendix 3 of these Guidelines; or
- (d) a fund that invests or proposes to invest primarily in income-generating real estate provided that -
  - (i) the units are listed on an exchange as specified by the SC and is located in a jurisdiction where the securities regulator for such fund is a full signatory of the IOSCO MMoU as listed in its Appendix A;
  - (ii) the offering of units is made by a holder of a CMSL who carries on the business of dealing in securities; and
  - (iii) the offering of units is limited to a one-off offering only to sophisticated investors and is not offered to the sophisticated investors on a continuous basis.

3.02 With regard to a fund as specified under paragraph 3.01(d) above, the following requirements are disapplied:

- (a) Chapter 4.0, save for paragraphs 4.07, 4.08 and 4.09;
- (b) Chapter 6.0;
- (c) Chapter 7.0; and
- (d) Chapter 10.0.

## **4.0 REQUIREMENTS FOR THE OFFERING, MARKETING OR DISTRIBUTION OF FOREIGN FUNDS**

### **General**

4.01 A foreign fund as specified under Appendix 1 of these Guidelines may be offered, marketed or distributed in Malaysia provided that–

- (a) the fund complies with the requirements as stipulated in the said Appendix; and
- (b) if the fund is listed and traded on an exchange in that jurisdiction, the exchange must be regulated by the relevant regulator in that jurisdiction.

4.02 A foreign fund as specified under Part 1 of Appendix 2 of these Guidelines may be offered, marketed or distributed in Malaysia provided that the home regulator of the NRI CIS is a signatory to the ACMF NRI MoU.

4.03 A foreign fund as specified under Part 2 of Appendix 2 and Appendix 3 may be offered, marketed or distributed in Malaysia provided that–

- (a) the fund is domiciled in a jurisdiction where the securities regulator for the fund is a full signatory of the IOSCO MMoU as listed in its Appendix A;
- (b) the fund is primarily regulated by a securities regulator that is a full signatory of the IOSCO MMoU as listed in its Appendix A;
- (c) the fund complies with the applicable requirements imposed on a comparable fund constituted and primarily regulated in Malaysia;
- (d) the legal and regulatory framework governing such fund and the enforcement of investors rights should provide a level of investor protection equivalent to that offered in Malaysia;
- (e) if the fund is listed and traded on an exchange in the foreign jurisdiction, the exchange must be an exchange that–
  - (i) is a member of the World Federation of Exchanges and other exchanges as may be specified by the SC; and
  - (ii) has standards of disclosure that are at least equivalent to that of Bursa Securities.

4.03A In addition to paragraph 4.03 above, a foreign fund as specified under Appendix 3 must –

- (a) be constituted and domiciled in a country which is a member of the permitted entity; and
- (b) be regulated by a securities regulator of a country which is a member of the permitted entity.

#### **Operator of a foreign fund**

4.04 An operator of a foreign fund must be licensed or otherwise regulated and supervised by the following:

- (a) For a fund as specified under Part 1 of Appendix 1 of these Guidelines, the securities regulator as specified under that part; or
- (b) For a fund as specified under Part 2 of Appendix 1 of these Guidelines, an ACMF Signatory to the ACMF Retail MoU; or
- (c) For a fund as specified under Part 1 of Appendix 2 of these Guidelines, an ACMF Signatory to the ACMF NRI MoU; or
- (d) For a fund as specified under Part 2 of Appendix 2 and Appendix 3 of these Guidelines, the securities regulator that is a full signatory of the IOSCO MMoU as listed in its Appendix A.

#### **Offering of listed foreign funds in Malaysia**

4.05 A foreign fund that is listed on an exchange in a foreign jurisdiction may only be offered in Malaysia through a listing and quotation of its units on Bursa Securities. In such instances, these Guidelines must be read together with the relevant provisions in the *Main Market Listing Requirements* of Bursa Securities.

4.06 Notwithstanding paragraph 4.05 above, a foreign fund as specified under Part 2 of Appendix 1 of these Guidelines that is listed on an exchange in its home jurisdiction may be offered in Malaysia as an unlisted capital market product.

#### **Requirements for Islamic funds**

4.07 A foreign fund may be offered, marketed or distributed as an Islamic fund in Malaysia provided that there is a Shariah supervisory board/Shariah adviser appointed by the operator.

4.08 The Shariah supervisory board/ Shariah adviser must—

- (a) certify that the fund is Shariah compliant;

- (b) review and ensure compliance with Shariah principle rulings at least on an annual basis;
- (c) ensure that the fund's monies and properties are properly safeguarded and segregated in accordance with Shariah requirements; and
- (d) state in the annual report whether the fund has been operated and managed in accordance with Shariah principles. The report by the Shariah supervisory board/ Shariah adviser must also include a statement to the effect that the status of securities has been determined or classified as Shariah compliant.

4.09 For an Islamic fund, the following information must be disclosed to the investors:

- (a) the name and experience of the Shariah supervisory board/Shariah adviser;
- (b) the roles and primary functions of the Shariah supervisory board/Shariah adviser;
- (c) a clear description of the Shariah approval process including details of methodologies, rulings and screening process; and
- (d) frequency of review on the fund's investments by the Shariah supervisory board/ Shariah adviser to ensure compliance with Shariah principles or any other relevant principle at all times.

## **5.0 OFFERING DOCUMENT AND CONSTITUTIVE DOCUMENT FOR A FOREIGN FUND**

### **Offering document**

- 5.01 An offering document which is required for the offering of a foreign fund to retail investors must comply with the relevant disclosure requirements applicable to a foreign fund as provided under the securities laws of Malaysia, the *Prospectus Guidelines for Collective Investment Schemes* and the *Guidelines on Disclosure Documents* issued by the SC.
- 5.02 In relation to a foreign fund to be offered to sophisticated investors, where there is any offering document accompanying such foreign fund in the case:
- (a) where the foreign fund is a fund other than a real estate investment trust, such offering document must be lodged with the SC in accordance with the requirements under the *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework*; or
  - (b) where the foreign fund is a real estate investment trust, such offering document must be submitted with the SC as required in the CMSA.

### **Constitutive document**

- 5.03 Nothing in the constitutive document of a foreign fund may exclude the jurisdiction of the courts of Malaysia to entertain any action concerning the foreign fund.

## 6.0 REQUIREMENT TO APPOINT A REPRESENTATIVE IN MALAYSIA

- 6.01 An operator must appoint a representative in Malaysia in relation to each foreign fund that is to be offered, marketed and distributed in Malaysia.
- 6.02 The operator must at all times, ensure that there is an appointed representative–
- (a) throughout the duration the foreign fund is offered in Malaysia; or
  - (b) so long as there is a unit holder of such foreign fund in Malaysia.
- 6.03 The operator shall remain responsible for the conduct and obligations of the appointed representative.
- 6.04 In relation to a foreign fund as specified below, only the following persons can be appointed as a representative:

<b>Foreign funds</b>	<b>Representative</b>
Specified under Appendix 1 and Part 1 of Appendix 2	(a) Holder of a CMSL; (b) Registered distributor; (c) Audit firm registered with the Audit Oversight Board, SC; (d) Trustee registered pursuant to guidelines issued by the SC; or (e) Any other person as may be approved by the SC.
Specified under Part 2 of Appendix 2	Holder of a CMSL for fund management that is a related corporation to the operator.
Specified under Appendix 3	A person registered under sub-section 76(2) of CMSA.

- 6.05 Notwithstanding paragraph 6.03, the SC may take action against a representative who fails to carry out the functions of a representative as set out under these Guidelines.

## Obligations of a representative

6.06 An appointed representative must –

- (a) represent the foreign fund and its operator for all matters relating to that foreign fund including representing the operator of that foreign fund in any dispute resolution scheme that the said operator may be subject to;
- (b) submit or make available to the SC any information relating to that foreign fund, the business of the operator or the representative, and any other information as may be required by the SC from time to time;
- (c) accept any notice or correspondence, including service of process, which unit holders may wish to serve on the foreign fund, its trustee/fund supervisor/custodian or its operator and forwarding the same to the said trustee/fund supervisor/custodian or operator, as the case may be;
- (d) keep a consolidated register<sup>1</sup> of unit holders, which must include the following information:
  - (i) For individuals, the name, address and the number of the identity card issued under the *National Registration Act 1959*, or passport number in the case of a foreigner;
  - (ii) For corporations, the name, registered address and registration number of that corporation;
  - (iii) The number of units held by each unit holder;
  - (iv) The date on which the name was entered in the register as a unit holder;
  - (v) The date on which any person ceased to be a unit holder; and
  - (vi) Any other relevant information or particulars of the unit holder;
- (e) provide unit holders<sup>2</sup> with information on the foreign fund in a timely and efficient manner, including any periodic reports, notices and public announcements issued in relation to the foreign fund;
- (f) concurrently submit a copy of the information referred to in subparagraph 6.06(e) above to the SC;
- (g) make available for public inspection at its registered office in Malaysia, at no charge, the following:

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<sup>1</sup> Where there are registered distributors, this register should be a consolidation of the registers multiple maintained by each registered distributor pursuant to paragraph 7.02 of these Guidelines.

<sup>2</sup> In the case where units are held under a nominee system, the representative must ensure that such nominee provides the said information to the ultimate beneficial owners of the units.

- (i) The current offering document and constitutive document;
  - (ii) Each material contract disclosed in the current offering document and in the case of contracts not reduced into writing, a memorandum which gives full particulars of the contracts; and
  - (iii) The audited financial statements of the foreign fund for the current financial year and–
    - (A) the audited financial statements for the last three financial years; or
    - (B) if established/incorporated less than three years, all audited financial statements preceding the date of the current offering document;
  - (iv) All reports, letters or other documents, valuations and statements by any expert or any part of which is extracted or referred to in the current offering document. Where a summary expert's report is included in the current offering document, the corresponding full expert's report must be made available for inspection;
  - (v) Writ and relevant cause papers for all material litigation and arbitration disclosed in the current offering document; and
  - (vi) All consents given by experts disclosed in the current offering document;
- (h) notify the SC immediately–
- (i) of any material change to or development in the foreign fund, or parties responsible for the foreign fund;
  - (ii) of any material action taken against the parties responsible for the foreign fund by the securities regulator of each jurisdiction where the fund is offered, marketed or distributed;
  - (iii) when the dealing of units in the fund has been suspended in the jurisdiction where it is primarily regulated or in Malaysia;
  - (iv) when the fund is no longer authorised to be offered in the foreign jurisdiction where it is primarily regulated;
  - (v) upon the commencement and completion of the termination or winding up of the foreign fund; or
  - (vi) of any change to its registered address or any other contact details;



- (i) ensure that the offering document and reports of the foreign fund, and all information meant for investors in Malaysia are either in Bahasa Malaysia or English language;
- (j) provide the SC details of all contracts between the representative and its operator in respect of the foreign fund. The SC must be notified of subsequent material amendments to these contracts;
- (k) ensure that the NAV per unit of the foreign fund is made publicly available on a daily basis except in the case of a–
  - (i) closed-end fund listed on Bursa Securities, where the NAV per unit of the foreign fund must be made publicly available at the frequency required by the relevant regulator in the jurisdiction, where it is primarily regulated or at least on a weekly basis; and
  - (ii) foreign property fund (including real estate investment trust) listed on Bursa Securities, where the NAV per unit of the foreign fund must be made publicly available at the frequency required by the relevant regulator in the jurisdiction, where it is primarily regulated or at least on a quarterly basis; and
- (l) submit to the SC the statistical returns of the foreign fund in accordance with the requirements set out under paragraphs 10.01 to 10.13 of these Guidelines.

6.07 If the representative is undertaking a regulated activity, it must obtain the necessary licence for that regulated activity.

### **Replacement of representative**

6.08 If the position of the representative becomes vacant, the offering, marketing or distribution of the foreign fund must immediately cease.

6.09 The operator must appoint a new representative within 30 calendar days from the date of the vacancy, or any such period as may be allowed by the SC.

6.10 The operator must immediately notify the SC of such appointment.

## **7.0 REQUIREMENT TO APPOINT A REGISTERED DISTRIBUTOR IN MALAYSIA**

- 7.01 An operator must appoint a registered distributor in Malaysia for the purpose of offering, marketing or distributing a foreign fund that is to be offered in Malaysia as an unlisted capital market product.
- 7.02 Such registered distributor must keep a register of unit holders, which shall include the following information:
- (a) For individuals, the name, address and the number of the identity card issued under the *National Registration Act 1959*, or passport number in the case of a foreigner;
  - (b) For corporations, the name, registered address and registration number of that corporation;
  - (c) The number of units held by each unit holder;
  - (d) The date on which the name was entered in the register as a unit holder;
  - (e) The date on which any person ceased to be a unit holder; and
  - (f) Any other relevant information or particulars of the unit holder.
- 7.03 A registered distributor must also comply with the relevant guidelines, codes of conduct and any other rules in relation to the marketing and distribution of unlisted funds issued by the SC and/or FIMM, as the case may be.

## **8.0 APPLICATION FOR SC'S APPROVAL OR RECOGNITION FOR THE OFFERING OF A FOREIGN FUND TO RETAIL INVESTORS**

### **General**

- 8.01 An application to the SC for the approval or recognition for the offering of a foreign fund to retail investors must be submitted by an adviser appointed by the operator of that foreign fund.
- 8.02 Notwithstanding paragraph 8.01 above, in relation to the listing and quotation of securities of a foreign exchange-traded fund (ETF) where the ETF operator has at least five years of experience in managing ETF (local or foreign), the application may be submitted by–
- (a) the ETF operator, if the ETF operator is a holder of a CMSL for fund management in relation to portfolio management, dealing in securities or advising on corporate finance; or
  - (b) in the case where the ETF operator is not a holder of a CMSL for fund management in relation to portfolio management, dealing in securities or advising on corporate finance, its related corporation who is a holder of a CMSL for such regulated activities, on behalf of the ETF operator.
- 8.03 Where the above paragraph 8.02 applies, all provisions in these Guidelines relating to advisers would be applicable to the ETF operator or the ETF operator's related corporation as the case may be.
- 8.04 Unless specified otherwise, applications should be submitted in accordance with the requirements set out under paragraphs 8.11 to 8.14 of these Guidelines.
- 8.05 The adviser and operator have a duty to ensure that all the requirements of the SC pertaining to submission of an application are met and is responsible for dealing with the SC on all matters relating to the application.
- 8.06 Submissions of applications that do not comply with the requirements of the SC or which are unsatisfactory may be returned.
- 8.07 The operator, adviser and any other person accepting responsibility for all or any part of the information and documents submitted to the SC should exercise due diligence for such information.
- 8.08 The adviser must submit to the SC any additional information as may be requested by the SC in relation to the application.
- 8.09 The SC must be immediately informed of–
- (a) any material change or development in circumstances that would affect the SC's consideration of the application; and/or

- (b) any material change or development in circumstances relating to the application occurring subsequent to the SC's approval or recognition.
- 8.10 The SC may consider an application to vary any term or condition imposed in its approval or recognition, as the case may be. Such application must be supported by justifiable grounds which may include changes in circumstances beyond the control of the relevant parties.

### **Submission of applications and documents**

- 8.11 An application to the SC for the approval or recognition of a foreign fund to be offered in Malaysia must be made by submitting a duly completed SC/FF – NEW Form<sup>3</sup> together with the following:
- (a) a cover letter signed by two authorised signatories of the adviser, stating–
    - (i) the approval or recognition sought;
    - (ii) the application complies with these Guidelines. Where there are departures from any relevant guidelines, to confirm that exemption or variation has been sought from the SC;
    - (iii) whether there is any conflict of interest, by advisers or experts in respect of the application. If a conflict of interest exists, to provide full disclosure of the nature of the conflict and steps to address the conflict; and
    - (iv) particulars of other required approvals obtained or pending (if applicable).
  - (b) two copies of the fund's constitutive document, such as custodial agreement or deed, certified by at least one of the directors of the operator that such constitutive document is–
    - (i) identical to the version filed or lodged or registered, as the case may be, with the securities regulator that primarily regulates the fund; and
    - (ii) a true and accurate translation of the original constitutive document if the constitutive document submitted is a translated version of the original constitutive document.

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<sup>3</sup> The SC/FF-NEW Form is available at [www.sc.com.my](http://www.sc.com.my)

- (c) a declaration from the operator that–
  - (i) the foreign fund is being offered, marketed or distributed to investors in the jurisdiction of the securities regulator that primarily regulates the fund;
  - (ii) the relevant licence held by the operator is not being subject to any suspension or revocation order by its securities regulator;
  - (iii) the operator complies with the relevant regulatory requirements or is not being investigated for violation of any regulatory requirements;
  - (iv) the application complies with these Guidelines. Where there are departures from any relevant guidelines, to confirm that exemption or variation has been sought from the SC; and
  - (v) there is no omission of material information that may affect the SC's decision in considering the application;
- (d) an undertaking from the operator that–
  - (i) it will submit to the non-exclusive jurisdiction of the courts of Malaysia;
  - (ii) it will ensure that the constitutive document of the fund will not contain any provisions that exclude Malaysia's courts from entertaining an action or legal proceedings against the fund, the operator or the fund's trustee/fund supervisor/custodian in connection with the fund; and
  - (iii) it will immediately cease the offering, marketing or distribution of the fund in Malaysia and will notify the SC accordingly in the event–
    - (A) the foreign fund ceases to be offered, marketed or distributed to investors in the jurisdiction of the securities regulator that primarily regulates the fund; or
    - (B) the relevant licence held by the operator has been suspended or revoked;
- (e) a copy of the authorisation letter issued by the securities regulator that primarily regulates the fund and in the case of a foreign fund permitted under Part 2 of Appendix 1 of these Guidelines, that such securities regulator has no objection to the foreign fund being deemed as a Qualifying CIS pursuant to the Standards of Qualifying CIS;

- (f) a copy of the operator's letters appointing its representative and where applicable, registered distributor(s) for the fund in Malaysia;
- (g) a written undertaking to the SC by the representative appointed pursuant to paragraph 6.01 that it will perform the duties required of a representative under these Guidelines;
- (h) in the case of a foreign fund permitted under Part 2 of Appendix 1 of these Guidelines, the ASEAN CIS Application Form;
- (i) submission of application to the SC must be made either in Bahasa Malaysia or English. All accompanying documents furnished to the SC, which are in a language other than Bahasa Malaysia or English, must be accompanied by a translation confirmed by the operator or the adviser as being an accurate translation of the original documents; and
- (j) where the SC deems necessary, a table comparing the rules on the operation and management of the fund under the laws and regulations of the jurisdiction where the fund is primarily regulated with the relevant laws and regulations in Malaysia.

8.12 In relation to a foreign fund that is to be offered to retail investors, the application under paragraph 8.11 above must be accompanied with an application to register the offering document in accordance with the requirements set out in the *Prospectus Guidelines for Collective Investment Schemes*.

8.13 Submission of an application must be addressed to–

Chairman  
 Securities Commission Malaysia  
 3 Persiaran Bukit Kiara  
 Bukit Kiara  
 50490 Kuala Lumpur  
 (Attention: Corporate Finance and Investments)

8.14 All applications must be accompanied by the relevant fees prescribed by the SC in the *Capital Markets and Services (Fees) Regulations 2012*. Payment should be made in the form of a crossed cheque/draft order made in favour of "Suruhanjaya Sekuriti" or "Securities Commission".

## **9.0 OFFERING OF A FOREIGN FUND TO SOPHISTICATED INVESTORS**

### **Lodge and Launch framework for the offering of a foreign fund to sophisticated investors**

- 9.01 In relation to the offering of a foreign fund to sophisticated investors, the requirements on the Lodge and Launch framework as set out in the *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework* shall apply. Lodgement of relevant information and documents with the SC is required prior to the offering of a foreign fund to sophisticated investors.
- 9.02 All information and documents that must be lodged with the SC as required under the *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework* are set out in the Lodgement Kit.
- 9.03 Any lodgement must be accompanied by the relevant fees prescribed by the SC in the *Capital Markets and Services (Fees) Regulations 2012*.

### **Application for SC's recognition for the offering of a foreign fund to sophisticated investors as specified under paragraph 3.01(d)**

- 9.04 An application to the SC for the recognition for the offering of a foreign fund to sophisticated investors as specified under paragraph 3.01(d) above must be submitted by a principal adviser appointed by the operator of that foreign fund.
- 9.05 Paragraphs 8.05 to 8.10 of these Guidelines are applicable to applications submitted pursuant to paragraph 9.04 above and applications must be submitted in accordance with the requirements set out under paragraph 9.06 to 9.09 of these Guidelines.
- 9.06 An application to the SC must be made by submitting the following:
- (a) a cover letter signed by two authorised signatories of the principal adviser, stating–
    - (i) the recognition sought, including details of the proposed offering in Malaysia;
    - (ii) the application complies with these Guidelines. Where there are departures from any relevant guidelines, to confirm that exemption or variation has been sought from the SC;
    - (iii) whether there is any conflict of interest, by the principal adviser or experts in respect of the application. If a conflict of interest exists, to provide full disclosure of the nature of the conflict and steps to address the conflict; and

- (iv) particulars of other required approvals obtained or pending (if applicable).
- (b) a declaration by the operator that–
- (i) the foreign fund is listed on an exchange in the jurisdiction of the securities regulator that primarily regulates the fund;
  - (ii) the relevant licence held by the operator is not being subject to any suspension or revocation order by its securities regulator;
  - (iii) the operator complies with the relevant regulatory requirements or is not being investigated for violation of any regulatory requirements;
  - (iv) the application complies with these Guidelines. Where there are departures from any relevant guidelines, to confirm that exemption or variation has been sought from the SC; and
  - (v) there is no omission of material information that may affect the SC's decision in considering the application.
- (c) an undertaking from the operator that–
- (i) it will submit to the non-exclusive jurisdiction of the courts of Malaysia;
  - (ii) it will ensure that the constitutive document of the fund will not contain any provisions that exclude Malaysia's courts from entertaining an action or legal proceedings against the fund, the operator or the fund's trustee/fund supervisor/custodian in connection with the fund; and
  - (iii) it will immediately cease the offering of the fund in Malaysia and will notify the SC accordingly in the event–
    - (A) the foreign fund has been delisted, or in the process of being delisted, from the exchange in the jurisdiction of the securities regulator that primarily regulates the fund; or
    - (B) the relevant licence held by the operator has been suspended or revoked;
- (d) a copy of the authorisation letter issued by the securities regulator that primarily regulates the fund or a copy of listing admission letter or approval letter to list on an exchange;
- (e) a copy of the operator's letter appointing the distributor for the fund in Malaysia; and



- (f) where the offering document is submitted with the SC in a language other than Bahasa Malaysia or English, a confirmation by the operator or principal adviser that the translated document submitted with the SC is an accurate translation of the original documents.
- 9.07 Submission of application to the SC must be made either in Bahasa Malaysia or English. All accompanying documents furnished to the SC, which are in a language other than Bahasa Malaysia or English, must be accompanied by a translation confirmed by the operator or the adviser as being an accurate translation of the original documents.
- 9.08 Submission of an application must be done by hard copy and addressed to–
- Chairman  
Securities Commission Malaysia  
3 Persiaran Bukit Kiara  
Bukit Kiara  
50490 Kuala Lumpur  
(Attention: Corporate Finance and Investments)
- 9.09 All applications must be accompanied by the relevant fees prescribed by the SC in the *Capital Markets and Services (Fees) Regulations 2012*. Payment should be made in the form of a crossed cheque/draft order made in favour of “Suruhanjaya Sekuriti” or “Securities Commission”.

## **10.0 REPORTING TO THE SECURITIES COMMISSION MALAYSIA**

### **General**

- 10.01 The representative of a foreign fund must submit statistical returns of the fund on a monthly basis.
- 10.02 The report should cover a period starting from the first day of a month until the last day of that month. For information required at a certain cut-off, it must be as at the last day of the month.
- 10.03 For a fund newly offered, marketed or distributed in Malaysia, the statistical returns must commence from the month in which the fund's offer period in Malaysia ends. For example, if a fund was launched on 28 June and the offer period ends on 18 July, the first statistical returns should be submitted for the month of July. In this instance, the statistical returns will consist of data for more than one month, i.e. from 28 June to 31 July.
- 10.04 The representative must take all necessary steps to ensure that the information provided in the statistical returns is complete and accurate.
- 10.05 The chief executive officer of the operator is ultimately responsible for all information submitted in the statistical returns. The chief executive officer is expected to ensure that necessary policies and procedures are in place, and that the information submitted to the SC in the statistical returns is true and accurate.
- 10.06 The representative must keep a printed copy of the statistical returns at its registered office or a designated place approved by the SC at all times for a minimum period of seven years from the date the statistical returns is submitted to the SC.
- 10.07 The representative must submit the statistical returns within seven business days of the month following the month of reporting.
- 10.08 Should there be errors and/or omissions discovered after the submission of statistical returns, the representative must immediately rectify and submit the amended statistical returns to the SC.

### **Submission of statistical returns during winding up**

- 10.09 While a fund is being wound up, the representative should continue to submit the statistical returns until the winding up is complete.

### **Statistical return of foreign fund offered to retail investors**

- 10.10 For a foreign fund offered to retail investors in Malaysia, the statistical returns for such fund must be submitted via the Trusts and Investment Management Electronic Reporting System (TIM-ERS), unless specified otherwise by the SC.
- 10.11 For guidance on the use of TIM-ERS, the representative may refer to the TIM-ERS user manual, which is available at TIM-ERS website at <https://ers.seccom.com.my/tims>.
- 10.12 The representative must, within 30 days of the launch of its first fund in Malaysia, apply to the SC for access to TIM-ERS, by submitting the following:
- (a) External User ID Request Form; and
  - (b) the duly completed Terms and Conditions of Use of TIM-ERS.

### **Statistical returns of foreign fund offered to sophisticated investors**

- 10.13 For a foreign fund offered to sophisticated investors in Malaysia, the statistical returns for such fund must be submitted via the online submission system, unless specified otherwise by the SC.

## Appendix 1

### PERMITTED FOREIGN FUNDS SPECIFIED UNDER PARAGRAPH 3.01(a)

#### Part 1 - Jurisdictions and Funds under Mutual Recognition Agreements

Jurisdictions	Funds
Dubai International Financial Centre	Islamic funds which are– (a) constituted and domiciled in the Dubai International Financial Centre; and (b) notified or registered with the Dubai Financial Services Authority and includes: <ul style="list-style-type: none"><li>• Public funds</li><li>• Private funds [100 participants]</li><li>• Umbrella funds</li><li>• Property funds (including REITs)</li><li>• Feeder funds</li><li>• Fund-of-funds</li><li>• Private equity funds</li><li>• Commodity-related funds</li></ul>
Hong Kong	Islamic funds (excluding hedge funds and leveraged funds) which are– (a) authorised and primarily regulated by Securities and Futures Commission Hong Kong (SFC) but exclude funds that are authorised under any mutual recognition agreement between SFC and another jurisdiction; (b) managed by SFC licensed managers; and (c) domiciled in– <ul style="list-style-type: none"><li>• Hong Kong; or</li><li>• jurisdictions that have broadly implemented IOSCO Principles for Collective Investment Schemes and are signatories to the IOSCO MMoU as listed in its Appendix A.</li></ul>

#### Part 2 –Jurisdictions and Funds under the ACMF Retail MoU

Jurisdictions	Funds
(a) Singapore (b) Thailand	Qualifying CIS

## Appendix 2

### PERMITTED FOREIGN FUNDS SPECIFIED UNDER PARAGRAPH 3.01(b)

#### Part 1 – Permitted Foreign Funds for Non-retail Investors under the ACMF NRI MoU

1. An unlisted fund which–
  - (a) is constituted or established in the jurisdiction of an ACMF Signatory to the ACMF NRI MoU;
  - (b) is offered for sale in the jurisdiction where it is primarily regulated and is not subject to any prohibition order imposed by its home regulator on the marketing, distribution or offering of units of such fund;
  - (c) complies with the requirements as set out under the *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (to be read together with the Lodgement Kit for Unlisted Capital Market Products Under Lodge and Launch Framework)*; and
  - (d) where the fund invests 85% or more of its NAV in another fund, the fund manager of such other fund–
    - (i) must be suitably authorised, regulated and supervised by an acceptable securities regulator; and
    - (ii) such regulator of the fund manager must be a signatory to the IOSCO MMoU as listed in its Appendix A or has a bilateral agreement or arrangement with the SC, in particular, with regard to co-operation on supervision, investigation, enforcement and information sharing.

#### Part 2 – Other Permitted Foreign Funds

1. Exchange-traded funds which are index-tracking and non-synthetic (ETF).
2. Listed closed-end funds (CEF).

### Appendix 3

#### PERMITTED FOREIGN FUNDS SPECIFIED UNDER PARAGRAPH 3.01(c)

Permitted entity	Funds
Islamic Corporation for the Development of the Private Sector, declared as an international organization under the <i>International Organizations (Privileges and Immunities) Act 1992</i> and any regulation issued under it.	Islamic funds which are allowed to invest only in the following permitted investments: <ul style="list-style-type: none"><li>• Shares and other securities equivalent to shares that are dealt in on an organised market;</li><li>• Sukuk that are dealt in on an organised market;</li><li>• Islamic money market instruments that are normally dealt in on the money market;</li><li>• Placement in Islamic deposits;</li><li>• Units or shares in other Islamic collective investment schemes; and</li><li>• Islamic financial derivatives.</li></ul>